

U.S. Department of Labor

Office of Administrative Law Judges
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Issue date: 24Jan2002

Case No.: 2001-ERA-40¹

In the Matter of

RONNEY L. BATH,
Complainant

v.

U.S. ROBOTECH, INC., and
ROY THOMPSON,
Respondent.

APPEARANCES:

BILLIE PIRNER GARDE, ESQ.,
Counsel for the Complainant

DAVID FIELDING, ESQ.,
Counsel for the Respondent

BEFORE: RICHARD D. MILLS
Administrative Law Judge

**RECOMMENDED DECISION AND ORDER APPROVING
SETTLEMENT AGREEMENT AND DISMISSING COMPLAINT
WITH PREJUDICE**

This is a proceeding arising under the Energy Reorganization Act ("ERA"), 42 U.S.C. §5851, and its implementing regulations at 29 C.F.R. Part 24. On April 13, 2000, the parties submitted a duly executed Joint Motion to Approve Settlement Agreement and requested dismissal of this case. Although the Part 24 regulations do not contain any provision relating to a dismissal of a complaint by voluntary settlement, under the Rules of Practice and Procedure for Administrative Hearings before the Office of

¹ This case was originally consolidated with Case Number 2001-ERA-41 which was disposed of under separate order dated January 18, 2002.

Administrative Law Judges, 29 C.F.R. Part 18, which are controlling in the absence of a specific provision at Part 24, the parties in a proceeding before an administrative law judge may reach agreement on their own. 29 C.F.R. Part 18.9(a)-(c).²

Under the terms of the instant Settlement Agreement, which was reached after the parties participated in private mediation, the Respondent agrees to pay Complainant and his attorneys stated sums in consideration of releases and discharges stated therein. With respect to Section III of the Settlement Agreement, which provides that the parties shall keep the terms of the settlement confidential, it is noted that they have attempted to comply with applicable case law by specifically providing that the confidentiality provision does not restrict disclosure where required by law. See, *McGlynn v. Pulsair, Inc.*, 93-CAA-2 (Sec'y June 28, 1993).

Having fully reviewed the Settlement Agreement in accordance with applicable precedent, I find that its terms are a fair, adequate, and reasonable settlement of the complaint.³ See, *Thompson v. U.S. Department of Labor*, 885 F.2d 551 (9th Cir. 1989); *Bonanno v. Stone & Weber Engineering Corp.*, 97-ERA-33 (ARB June 27, 1997).

The Agreement contains a provision that it does not preclude the Complainant from cooperating with any investigation by a federal, state or local administrative agency. It provides that Mr. Bath is not to disclose the existence of the Agreement nor the terms of the Agreement with any third party. It has been held in a number of cases with respect to confidentiality provisions in Settlement Agreements that the Freedom of Information Act, 5 U.S.C. §552 (1988) (FOIA) requires federal agencies to disclose requested documents unless they are exempt from disclosure. *Faust v. Chemical Leaman Tank Lines, Inc.*, Case Nos. 92-SWD-2 and 93-STA-15, ARB Final Order Approving Settlement and Dismissing Complaint, March 31, 1998. The records in this case are agency records which must be made available for public inspection and copying under the Freedom of Information Act.

² The parties must "[n]otify the administrative law judge that the parties have reached a full settlement and have agreed to dismissal of the action." 29 C.F.R. Part 18.9(c)(2). Once such notification occurs, the administrative law judge shall then issue a decision within thirty (30) days if satisfied with the agreement's form and substance. 29 C.F.R. Part 18.9(d).

³ It is noted that the terms of the instant agreement include the settlement of matters arising under laws other than ERA. See Settlement Agreement & Release at Section 1.1. For the reasons set forth in *Poulos v. Ambassador Fuel Oil Co., Inc.*, 86-CAA-1 (Sec'y Nov. 2, 1987), I have limited my review of the agreement to determining whether its terms are fair, adequate, and reasonable settlement of Complainant's allegation that Respondent violated ERA. See *Poulos*, supra, slip op. at 2. ("[The Secretary's] authority over settlement agreements is limited to such statutes as are within [the Secretary's] jurisdiction and is defined by the applicable statute").

Accordingly, the Joint Motion of the parties is **GRANTED**, and it is hereby **RECOMMENDED** that the Settlement Agreement between Complainant, Ronney L. Bath and Respondents, U.S. Robotech, Inc. and Roy Thompson, be **APPROVED** and that the instant complaint(s) be **DISMISSED WITH PREJUDICE** .

So ORDERED.

A
RICHARD D. MILLS
Administrative Law Judge

NOTICE: This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. §24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, DC 20210. Such a petition for review must be received by the Administrative Review Board within ten business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge. See 29 C.F.R. §§ 24.8 and 24.9, as amended by 63 Fed. Reg. 6614 (1998).